

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 944 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LILAVATIBEN BALKRISHNA

Versus

SHANKARACHARYA MATH AND RAMBAI TRUST

Appearance:

MS VASUBEN P SHAH for Petitioner
MR PC MASTER for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 22/07/97

ORAL JUDGEMENT

1. The petitioner is the original plaintiff and the respondent No.1 is the registered public trust in the name and style of "Shri Shankaracharya Math and Rambai Trust" . It appears that the respondent No.1/1 to 1/3 as Power of Attorneyholders of the aforesaid public trust instituted Small Causes Suit No.17/78 for recovery of the

premises and similar suit was filed against other tenants also to recover the possession of premises of respective tenants. The suits were filed inter alia on the ground of nonpayment of rent, reasonable and bonafide requirement. It appears that in such suit initially a settlement in writing was reached on 1.1.1988 as per which the petitioner-tenant was to vacate the premises to enable the public trust to reconstruct the entire building and to provide exactly proper accommodation to the tenant. It is the case of the petitioner-tenant that subsequently there was another settlement, dated 2.8.89 between the trust and five tenants including the present petitioner as per which the trust was to reconstruct the building and to provide the accommodation of the same nature to the tenant.

2. In the suit being Small Causes Suit No.139/90 filed in the Small Causes Court, Surat by the present petitioner an application at Exh.5 was given for restraining the trust from recovering the possession of the suit premises inter alia contending that the trust is bound to act as per the terms of settlement and that the decree of possession that was passed by the trial court based on such terms and conditions was vitiated by fraud allegedly committed by the Power of Attorneyholders of the said trust. The trial court dismissed the said application at Exh.5 for injunction against which appeal was preferred which also came to be dismissed and that is how the petitioner-plaintiff is before this court.

3. The two courts below have thus reached concurrent findings that the petitioner-plaintiff has failed to establish the prima facie case, that the balance of convenience was not in favour of plaintiff and that irreparable loss will be caused to the respondent-defendant-trust if the injunction as prayed for is granted. In view of the aforesaid, under section 115 of C.P.C. and in the light of the decision of the Apex Court in the case of THE MANAGING DIRECTOR, HINDUSTAN AERONAUTICS LTD, BANGALORE vs AJIT PRASAD TARWARY reported in AIR 1973 SC 76 this court will be loath to interfere in its revisional jurisdiction with the concurrent orders passed by two courts below. However, on hearing the parties, it was found that the interest of justice will be met if the Small Causes Court at Surat is directed to decide and dispose of the Small Causes Suit No.139/90 on or before 31st January, 1998 on undertaking being filed by both parties to this court that the court shall proceed to frame issues and record evidence preferably from 5th August, 1997 without granting any adjournment and by recording evidence day-to-day itself

shall decide the suit before the aforesaid time. This direction is given on the obvious consensus from Mr.P.C.Master, Ld.Advocate for respondent No.1/3. District Judge at Surat is also directed to communicate writ of this order to the concerned Small Causes Judge and to keep supervision as to whether the trial is expeditiously being tried as directed by this court by the concerned Small Causes Court judge. or not. In view of the aforesaid possession of the premises from the petitioner shall not be taken till 31st January, 1998.

4. In the result, rule is discharged subject to aforesaid directions which are issued with the consensus of the parties. No costs.

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